



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MRA/154582

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed January 07, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on February 11, 2014, at Waukesha, Wisconsin.

NOTE: The record was held open to allow the parties to supplement the record. The agency submitted its budget printouts. They have been marked as Exhibit 6 and entered into the record. The Petitioner's spouse submitted documentation of her monthly expenses. This packet of information has been marked as Exhibit 7 and entered into the record.

The issue for determination is whether there is a basis to increase the Community Spouse Income Allocation and therefore, decrease Petitioner's Patient Liability.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Laura [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Karen Pearson, Economic Support Specialist  
Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On December 20, 2013, the Moraine Lakes Consortium sent the Petitioner a notice indicating that as of November 29, 2013, he would be eligible for Nursing Home Long-Term Care benefits, and that as of January 1, 2014, he would have to pay a patient liability of \$1586.75 per month. (Exhibit 5)
3. Petitioner's spouse filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 7, 2014. (Exhibit 1)

## DISCUSSION

Medical assistance rules require institutionalized persons to "apply their available income toward the cost of their care." *Wis. Admin. Code § DHS 103.07(1)(d)*. Cost of care is the amount s/he will pay each month to partially offset the cost of his/her Medicaid services. The cost of care is referred to as a patient liability amount when applied to a resident of a medical institution. *Medicaid Eligibility Manual (MEH)*, §27.7.1

The cost of care is calculated by taking the institutionalized person's gross income and deducting the following amounts, if they apply:

1. Personal Needs Allowance (\$45.00 for everyone)
2. Community Spouse Income Allocation
3. Dependent Family Member Allocation
4. Court Ordered Guardian or Attorney Fees or Special Exempt Income
5. Medical/Remedial Cost and Cost of Person's Health Insurance Premiums

*MEH §27.7.1 and §18.6.1*

There is no assertion and no evidence that Petitioner has any dependents other than his spouse, nor is there any assertion that Petitioner has court ordered guardian or attorney fees or other special exempt income.

The deduction with which Petitioner seemed to be most concerned was the Community Spouse Income Allocation.

### *Community Spouse Income Allocation*

State and federal medical assistance laws contain provisions that allow an institutionalized person to allocate some of her income to her spouse so that he does not fall into poverty. *See Wis. Stat. § 49.455 and 42 U.S.C. §13964-5*; also see *MEH §§18.1 and 18.6.1*. This is called a Community Spouse Income Allocation or CSIA. (Id.)

Generally speaking, the Community Spouse Income Allocation is calculated by taking the Minimum Monthly Maintenance Needs Allowance (MMMNA) and subtracting from that amount, the Community Spouse's gross monthly income. *MEH §§18.1 and 18.6.1*.

The MMMNA currently is the **lesser** of \$2,898 or \$2,585 plus excess shelter costs. *MEH § 18.6.2*. Excess shelter costs are shelter costs above \$756.50. *Id.*

Administrative law judges (ALJs) have the authority to increase the CSIA above the MMMNA when the MMMNA is insufficient to meet a particular community spouse's basic maintenance needs and when there

exist "exceptional circumstances resulting in financial duress" for the community spouse. *Wis. Stat. §49.455(8)(c); Wis. Admin. Code §DHS 103.075(8)(c); MEH §18.6.* "Exceptional circumstances resulting in financial duress" means situations that result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs". *Wis. Admin. Code §DHS 103.075(8)(c); emphasis added.*

It appears undisputed that the current MMMNA for Petitioner's spouse is \$2898. (*See Exhibit 6*)

Petitioner's spouse essentially asked that her expenses be examined and that the CSIA be increased above the \$2,898 MMMNA. She submitted documentation of the following monthly expenses in Exhibit 7:

1. Tax Withholding from Paychecks = \$78.34 average monthly expense
2. Mortgage - \$1081.34 (Includes an escrow payment for property taxes)
3. WE Energies - \$276.25
4. Water and Sewer - \$35.44 per month

Water \$47.45 + Sewer \$43.87 + Storm Water \$15.00 = \$106.32 Total Charges  
\$106.32 / 3 months = \$35.44 per month

5. Car Payment - \$387.18
6. Homeowner's Insurance – \$44.20

\$530.38 / 12 months = \$44.20

7. Time Warner Cable = \$187.87 to \$192.33

This expense will not be allowed. The bill provided by Petitioner's Spouse is mostly for premium cable channels and pay per view movies, which are not a basic and necessary expense that can be subsidized by the Medicaid program.

Petitioner's spouse noted that her phone bill is bundled with her cable bill, but the billing statement did not reflect this. As such, \$30.00 per month will be allowed for a phone expense, which is consistent with the FoodShare Phone Utility Allowance. FoodShare Wisconsin Handbook §8.1.2

8. Chase Credit Card 1440 - \$25.00 minimum monthly payment (MMP)

Total Balance = \$793.38

9. Chase Credit Card 7016 - \$105.00 MMP

Total Balance = \$6,872

10. Bank of America Credit Card = \$230.00 MMP

Total Balance = \$10,994.49

11. Sam's Club Discover Card = \$38.00 MMP

Total Balance = \$1,887.69

12. Payment to Collections Agency via CSC Logic, Inc. for home repairs - \$45.00

13. Discover Card 2271 = \$181.00 MMP

Total Balance = \$8,767.65

14. Kohl's Charge Card = \$80.00 MMP

Total Balance = \$2,871.40

15. Milwaukee Brewer's Bank of America Credit Card - \$94.00 MMP

Total Balance - \$3,235.63

16. Chase Freedom Card 5052 = \$117.00 per month MMP

Total Balance - \$5,749.37

17. Russ Darrow Honda Car Maintenance - \$110.00

It is not entirely clear what this was for, but instead of considering the \$110 as a one-time expense spread out over 12 months, it is reasonable to allow a \$110 per month allowance for gas and other car maintenance needs.

18. Home Depot – Possible Area Rug and Hanging Basket - \$48.85

These expenses will not be allowed. They are not basic and necessary expenses.

19. Target - Wind Tunnel Pro Vacuum - \$124.91

See item 20, below, for comment.

20. Target – Crunch Pak fruit; Toilet Seat and Wastebasket - \$30.19

See item 20, below, for comment

21. Target Food – Cat Supplies – Vinyl gloves/Face Mask - \$71.98

A reasonable allocation for the spouse's monthly food bill is \$200 per month, which is consistent with the maximum allotment allowed in the FoodShare program for an individual. FoodShare Wisconsin Handbook §8.1.2

For personal expenses, i.e. cleaning supplies, shampoo, toothpaste, etc, it is reasonable to allocate \$75.00 per month, based upon the three target receipts provided by Petitioner, above.

However, any expenses for the cat will not be allowed at this time. Medicaid should not be expected to subsidize a pet. If, in the future, Petitioner's spouse's physician indicates that the cat is a medically necessary service pet, the animal's expenses might be allowed.

22. Advanced Disposal Dumpster – \$31.83 per month for home improvement

$$\$382.00 / 12 = \$31.83$$

23. Sussex Ace Hardware = \$9.41 per month

$$\$66.14 + \$46.76 = \$112.90$$

$$\$112.90 / 12 \text{ months} = \$9.41 \text{ per month}$$

24. Target Visa - \$298.00 MMP

$$\text{Total Balance} = \$10,162.50$$

Petitioner's Spouse's credit card debt totals \$51,334.11. Although the cause of the debt is unclear, the mere fact that it exists constitutes an extreme circumstance that places Petitioner's spouse in serious financial duress. As such, it will be allowed for a finite period of time.

The total of Petitioner's spouse's minimum monthly payments on the nine different credit cards is currently, \$1168 a month. However, having her pay only the minimum monthly payment on nine separate credit cards will not help her financial situation. Using the pay-off calculator at <http://www.bankrate.com>, and estimating an overall interest rate of 18%, Petitioner should be able to pay off that debt, in about five years, making payments of \$1400 per month, assuming she takes steps to consolidate the debt.

**It is recommended that the Petitioner's spouse consult with a debt/credit counseling service to help her reign in her credit card debt, as her credit card expenses might not be allowed after five years, if she has not shown some responsible management of the debt.**

Petitioner's remaining allowable expenses total \$2404.49 per month. This brings the total monthly need to \$3804.09.

This is greater than the \$2,841 MMMNA, so the agency should use a MMMNA of \$3805 per month. This allowance is made, taking into consideration the statement of Petitioner's representative that Petitioner's Spouse is preparing to sell her home, which might also help her alleviate her debt.

Petitioner's spouse's income consists of income earned at [REDACTED] and income received from a Pacific Life Variable Annuity.

Petitioner's Spouse makes a monthly withdrawal from the Pacific Life Annuity in the amount of \$298.00 per month. (Exhibit 3, pgs. 5-6)

Petitioner's spouse provided three bi-weekly paystubs showing gross income of \$428.70, \$290.53 and \$362.68. (Exhibit 7, pgs. 3-5) This averages out to be \$721.28 per month:

$$\$428.70 + \$280.53 + \$362.68 = \$1081.91$$

$$\$1081.91 \div 3 = \$360.64 \text{ average income per bi-weekly paycheck}$$

$$\$360.64 \times 2 \text{ pay periods per month} = \$721.28 \text{ monthly earned income}$$

Petitioner's Spouse's total income is then:  $\$298 + \$721.28 = \$1019.28$

$\$3805 \text{ MMMNA} - \$1019.28 \text{ Community Spouse Income} = \$2785.72 \text{ Community Spouse Income Allocation.}$

## **CONCLUSIONS OF LAW**

There is a basis upon which to increase the Community Spouse Income Allocation and therefore decrease Petitioner's Patient Liability.

**THEREFORE, it is**

**ORDERED**

That the agency recalculate Petitioner's patient liability using a Community Spouse Income Allocation of \$2785.72 for the next five years, after which time Petitioner's Spouse's monthly needs should be reevaluated. The agency shall take all administrative steps to complete this task within ten days of this decision.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

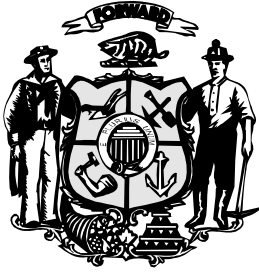
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 20th day of March, 2014

---

\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 20, 2014.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability